Freedom of association is under attack. Will the Supreme Court protect it?

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Millions of Americans today are afraid to express their opinions on matters of public importance. A summer poll by the Cato Institute found that 62% of Americans were afraid to reveal their opinions; nearly one-third (32%) of employed Americans feared that they would lose their job or miss out on career opportunities if their views became known.

Out of fear of harassment or social banishment, many donors to certain causes prefer to make their gifts anonymously. Unfortunately, some politicians today want to require charities to turn over their donor lists to the state. Democratic politicians in California, New York and New Jersey have been particularly aggressive in their attempts to force non-profits to reveal the names and addresses of their top donors — in some cases for publication on the internet.

First Amendment violation

Although proponents of donor disclosure laws claim they are needed to combat fraud, state officials already possess the power to subpoena donor information in conjunction with specific investigations, making bulk collection unnecessary.

Politicians may be seeking donor information in order to expose those who oppose their pet causes or to create informal enemy lists. And in the internet era, can there be any doubt that even well-intentioned donor disclosure laws will be compromised by hackers, leakers, or sheer incompetence?

This term, the Supreme Court has a chance to clarify that such laws violate the First Amendment right of free association. On Jan. 8, the court agreed to take up two cases that challenge California's donor disclosure policy. California requires any charitable organization that raises money in the state to turn over private information of their major donors (even those that reside outside of California). In *Americans for Prosperity Foundation v. Becerra* and *Thomas More Law Center v. Becerra*, two center-right 501(c)(3) organizations refused to turn over donor information to the state and took then-California Attorney General Kamala Harris to court.

A trial revealed that the California Attorney General's office "systematically failed to maintain the confidentiality" of donor information it collected and that past contributors to the organizations suffered "public threats, harassment, intimidation, and retaliation" on account of their association with the groups. Ultimately, the trial court ruled that California's bulk

disclosure requirement violates the First Amendment, but the U.S. Court of Appeals for the Ninth Circuit reversed. The high court will weigh in this spring.

Earlier precedents of the court

If the Supreme Court applies its earlier precedents, it is likely to side with the charitable organizations. In the 1995 case of *McIntyre v. Ohio Elections Commission*, the court affirmed the First Amendment right to publish political pamphlets anonymously, striking down a state requirement that authors of pamphlets concerning public issues reveal their names. And in the landmark 1958 case of *NAACP v. Alabama*, the court unanimously held that the state may not compel groups to hand over their membership lists, as disclosure could expose members "to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility."

Supporters of donor disclosure laws claim that the NAACP case was decided in the context of white supremacist violence and does not apply to the current cases. But the NAACP Legal Defense and Education Fund supported the two conservative non-profit groups before the Ninth Circuit, arguing that failure to apply the precedent here would gravely harm civil rights groups and other progressive organizations. And nonprofits from across the ideological spectrum oppose such laws as a threat to their ability to fundraise. They're right.

Like the fight for American independence, the abolitionist movement, the quest for women's suffrage and the American civil rights movement, most causes or social movements today (on the right and the left) depend, in part, on the support of anonymous donations. In the era of cancel culture, doxxing, computer hacking and cyber-bullying, the Supreme Court must protect our right to join and support unpopular groups anonymously. American civic life depends on it.